No. 106
Brief of Atty. Gen. & Sol. Gen. U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP BUENA VENTURA, JUAN de Lazarraga, claimant, appellant,
v.
THE UNITED STATES.
} No. 106.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

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STATEMENT.

The facts in this case are substantially undisputed, and are as follows:

The vessel was a merchant vessel, a cargo carrier exclusively, trading between ports of England, Spain, the United States, and the West Indies, and was owned by Spanish subjects, part of whom resided in England

and part in Spain; she sailed under the Spanish flag and royal patent, commanded by a master and manned by thirty-three other mariners, all of whom were Spanish subjects. Her last voyage commenced at Liverpool with a general cargo on board, and thence proceeded by way of Santander, Spain, to San Juan, Porto Rico, and Havana and other Cuban ports to discharge; thence in ballast by way of Ship Island, Miss., to Pascagoula, Miss., where she took on, between April 1 and 13, 1898, a cargo of lumber destined for Rotterdam, Holland, under a charter party, dated Liverpool, March 18, 1898, which describes the vessel as "now ready to leave Cuba." On April 18, 1898, she cleared from Scranton, Miss. (the port and customs district for Pascagoula), and proceeded to Ship Island and was detained there by low water, and thence sailed on April 19 between 8 and 9 o'clock a. m.; about 7 o'clock on the morning of April 22 the vessel was captured by the U. S. S. *Nashville*, some 8 or 9 miles off Sand Key Light, while steering east near the coast along the Florida reef and adjacent to Key West, Fla. The vessel's papers were regular and free from suspicion. Besides the bills of lading for cargo and the charter party, there were the following clearance papers from the United States authorities: An outward foreign manifest showing the vessel to be bound for Rotterdam; a coasting manifest showing Norfolk, Va., as the destination, and containing a permit to proceed to that port "to lade bunker coal;" a bill of health showing "Norfolk and other places beyond sea" as the destination; a receipt for duties showing tax of official

fees under the "coastwise" heading; a certificate of payment of 3 cents a ton tonnage duty on a previous entry from Cienfuegos at Brunswick, Ga., as the first payment in the year beginning September 9, 1897. It was admitted by stipulation (p. 32) that the log of the *Buena Ventura* and the certificate of the Spanish vice-consul at Pascagoula state that the vessel sailed for "Rotterdam via Norfolk."

In the adjudication below two witnesses were examined *in preparatorio*—the master and the first officer. The decree restored all the cargo as neutral, and condemned the vessel because, although she had permission to touch at Newport News [Norfolk] for coal on her voyage to Rotterdam, Newport News was not her port of discharge; and, having been captured when pursuing the same course she would have pursued had there been no intention to stop for coal, neither such intention nor the permission tended in anyway to increase the liability to capture; and that her case clearly did not come within the language of the President's proclamation of April 26, 1898. Thereupon the master, as claimant on behalf of owners, took this appeal.

The above facts appear in the claim and affidavit (pp. 6, 7), the depositions (pp. 17–23), the opinion (pp. 24, 31), and by the documents appended and interleaved (pp. 32, 39). The President's proclamation of April 26, 1898, is printed as an appendix to this brief. The assignments of error (pp. 10–11) contend that the vessel was exempt from capture as prize under the fourth and fifth articles of the proclamation.

ARGUMENT.

In the language of the prize court, the *Buena Ventura* was an enemy vessel found upon the high seas at the commencement of the war, and not coming within the exceptions in the proclamation; and it is upon these grounds that we ask the court to affirm the condemnation.

There is some doubt upon the testimony and the official papers as to the nature of the voyage when the vessel was captured, both concerning the correct point of departure and termination and relative to its character as domestic or foreign when in or near our waters. This raises the question of "continuous voyages." This is perhaps the same question under two aspects, and arises because of the doubt (not amounting to a dispute) as between the captain's statement that the "last voyage began at Scranton to Rotterdam" (p. 18) and the first officer's statement that the last voyage began at Liverpool and was to have ended at Rotterdam (p. 22). The date of departure from Liverpool does not appear. The latter view appears the more likely, because such trips are usually round voyages from and back to the foreign port of departure or some other foreign port not far distant. The vessels come to the United States in ballast from the intermediate foreign ports of discharge (West Indian), and the return voyages really begin from the latter ports. They take on in the United States return cargoes of lumber and touch at another domestic port on the way for coal. The voyage (as well as the vessel) certainly was foreign *quoad* the United States. Such a voyage starts at a foreign port and discharges at foreign ports; the

last of those ports is the outward termination of the voyage; and then returning inward and finally terminating at the initial or some other foreign port, touches here for cargo and coal. Presumably a preceding voyage on entry at Brunswick, Ga., from Cienfuegos (p. 34) was made in the same way for the same purposes, for the first payment of foreign tonnage tax under the act of June 26, 1884, as amended by section 11 of the act of June 19, 1886 (24 Stat., 79), was then imposed, our customs authorities, however, evidently regarding the "West India Islands" as the foreign point of origin of the voyage rather than the initial European port. This was, of course, to look at the voyage as in two parts, and to lay our tax in view of the starting point of the return or inward portion of the voyage. Thus the ship was foreign and the voyage was foreign, and began at all events, considering it as a return voyage (outward from this country), at the final port of discharge in Cuba, and not from this country. It is true that statutory provisions, presently to be referred to, regarding a coastwise license expressly state that the tonnage tax is not to be affected thereby, and this is so whether the proper rate is that for certain West Indian and other foreign ports or for European ports, on which it may be argued that the coastwise license grants a certain domestic character to the intermediate portion of the voyage proceeding under the same notwithstanding the tonnage tax.

Now, this question is of some interest and importance in the case, because under the Treasury regulations (Syn. 17198) a foreign vessel, clearing from a domestic port to a foreign port via a domestic port, where she stops for

coal, supplies, or cargo, should proceed under sections 4367–4369, Revised Statutes, which require foreign vessels bound coastwise to deliver a manifest of the lading on board to the collector of the district of departure and to the collector at the port of call. These provisions obviously relate particularly to a case where there may be foreign goods to be unladen and imported. These regulations state that shippers' manifests of exports should be accepted by the collector at the first port as if the vessel were to proceed from such port directly to a foreign port. Nevertheless, although no foreign goods may be on board, and the call be merely for fuel, it seems that there is a final clearance in the case of vessels specified in the ruling at the second port which is called the "last port of departure."

We contend, therefore, that this vessel started on her return voyage at the last port of discharge, Cienfuegos, and, notwithstanding the subsequent domestic clearance at Scranton (where she received also a foreign clearance), she was a foreign vessel sailing from a foreign port to a foreign port via a domestic port, or via two domestic ports. Her own papers show this to be the case. The charter party, interleaved between pages 38 and 39 of the record, state that she "is ready to leave Cuba," and that after proceeding to Ship Island to load, she is to proceed with her load, "as customary, to Rotterdam." The last Cuban port, Cienfuegos, was the final port of discharge. In the *Rol de Navegacion*, which appears to be the crew list, and is not paged, the last entry in the latter half of the book, which is devoted to the entry and

clearance of the vessel under the heading "*Llegada a puertos*" (seeming to be the Spanish phrase for "arrivals in port"), shows that the vessel reached Pascagoula "proceeding from Cienfuegos."

And, looking at the facts as to our customs control over the vessel, and conceding that the Treasury regulations require final entry and clearance even at a coaling port, we contend that this was at all events a "foreign vessel clearing from a domestic port to a foreign port," although it was via another domestic port; the Scranton clearance was foreign, the destination plainly shown to be Rotterdam, merely *via Norfolk;* in other words, while there was a domestic clearance as well under the regulation, this is to be taken merely as part of the permit to stop, a concession appended to and incorporated in the foreign clearance. The vessel's own papers show this also; see stipulation (p. 32); see also bills of lading interleaved after that page, and the outward foreign manifest (p. 37), and the master's oath thereon (id.), which are conclusive of the destination and character of the voyage as foreign, notwithstanding the fact that the permit to proceed coastwise for coal involves a coasting manifest (p. 38) and a domestic bill of health (p. 36). And while there was to be a final entry and foreign clearance at Norfolk, which in a sense was inconsistent with the real nature of the case and state of the facts, may this method of customs administration in the regulation of vessels (framed to detect illegal importation and as a check for statistic returns) avoid the effect of the definite foreign clearance from the first port a few days before capture, or confer a

right or character upon the vessel which would not otherwise exist? We think not. She is bound by her character and the real character of the voyage, and can not even on a strict and technical view of the case draw to herself a peculiar character and a safeguard (because of the permit and the necessity for final clearance at Norfolk as the last port of departure) which is not well founded.

Now, looking at the essence: If, because of the permit, her status had been really changed in any substantial respect, or if the good faith of the Government, above the language of the proclamation, were concerned to sustain a temporary domestic quality conferred upon her as within or near our territorial waters under pledge of safety, the case might be otherwise. But the good faith of the Government is not so involved. The court held, and it was the fact, that "when captured" she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in anyway to increase her liability to capture.

The record shows that the *Buena Ventura* was captured about 8 or 9 miles from Sand Key light-house, near Key West (master's deposition, p. 17; first officer, p. 31). The court found that when captured she must have been pursuing the same course that she would have pursued had she intended to proceed to Rotterdam without stopping for coal. It is quite evident from inspection of the Navy Chart (Atlantic Coast of the United States, Cape Canaveral to Havana, with Straits of Florida and Bahama Banks, compiled from the latest United States

Coast and British Admiralty Surveys, 1886) that this is the fact, because her naturally proper course for Rotterdam would have carried her along the Florida coast until she was well clear of the Great and Little Bahama Banks. If she had been captured farther north, having deflected from the Rotterdam course in order to proceed on to Norfolk, the claim here made might be tenable; but as the case stands it is not, because she was pursuing at the time she was captured her normal course to Rotterdam. How is it possible to say that she may not have given up the intention to stop at Norfolk and have determined to keep on to Rotterdam? The coal in her bunkers, while possibly low (although there is no evidence on that point), may have been sufficient to carry her to Rotterdam or at least to some home port. As to the suggestion made here that she was not captured on the high seas at all, but in our territorial waters and therefore, constructively, was entitled to the protection of the fourth article, the libel says "on the high seas;" the testimony is "8 or 9 miles from Sand Key light." There is nothing to show that in her course along the Florida reefs she was ever within the limit of territorial waters, but the contrary. Sailing in that locality the navigator's prudence would dictate that they should be at all times well off land.

Now, looking at the language of the proclamation—under its exemptions this Spanish vessel was not in a port of the United States on April 21, the earliest date to which the exemption in article 4 could relate; nor was it such a vessel protected by article 5, because, while it sailed from a foreign port bound to the United States prior to April 21, this sailing was not for the purpose of

discharging cargo in the United States, and only such Spanish vessels are fairly to be regarded as protected by the letter and reason of the proclamation.

In other words, the foreign character does not protect the vessel, because she was not coming to this country to discharge at all, either on her original entrance at Pascagoula or her proposed call at Norfolk, and the purpose and motive of the relative exemption of the proclamation is to protect foreign vessels sailing with cargoes for the United States before the war and likely to be taken unawares with their cargoes as they approach our coasts. Nor can the domestic situation protect her, because she was not in a port of the United States; and while a hypothetical case might be imagined in which a vessel's situation in or near our waters would justify the view that she was within the protection of article 4 of the proclamation, although not in a port of the United States, this case is not covered by such a view, but under both the letter and spirit of the proclamation is valid prize for the reasons found by the court and above stated.

We do not need to dwell on the propositions that exemptions founded upon such a document should be express or deducible by clear and necessary inference; that where in the natural signification of the words the meaning is plain and there is nothing to interpret, an "interpretation" is not allowable; and, finally, that the introduction of a different and enlarged meaning and the extension of the exemptions to cases not covered nor intended to be covered may not be permitted under the doctrines of prize law and well-fixed principles of all law relating to statutory construction. (Vattel, lib. 2, c. 17,

sec. 262; *Doggett* v. *Florida R. R.*, 99 U. S., 72; *Thornley* v. *United States*, 113 U. S., 310; *Lake County Commrs.* v. *Rollins*, 130 U. S., 662; *The Phœnix*, Spink's Prize Cases, 1; *The Argo*, Id., 52.)

THE APPELLANT'S BRIEF.

The main contentions are that the *Buena Ventura* had sailed from a foreign port prior to April 21, and was protected by article 5 of the proclamation, arguing that, though the ship was in ballast, from the moment she sailed from Cuba toward Ship Island her service and the voyage to the United States under the charter party began, and that she was also entitled to exemption under article 4 because, when the proclamation was issued on April 26, the *Buena Ventura* was actually in a port of the United States under the process issued pursuant to the prize libel.

We think we have sufficiently answered the first contention in the foregoing pages, the claim of the Government and captors being that this enemy vessel's foreign voyage technically and really terminated at the last Cuban port of discharge, and that the charter party contract by which she came here merely in ballast to get a return cargo, and the subsequent license to coal, were mere incidents of the return voyage to a *foreign* port, and did not make the vessel one of those coming here to discharge, to which exemption was extended under article 5. The argument here suggests a more detailed consideration of the question of continuity of voyage, which is reserved for examination *post*.

Concerning the second contention, and even granting that vessels in our ports April 26 and not those in our ports April 21 (which was the date fixed by decision of the prize court in the *Miguel Jorer* and *Catalina* cases, and was accepted by the Government) were protected, it is difficult to believe that this argument is seriously advanced. The view upon which the court below fixed the date of exemption under article 4 as April 21 and not April 26, the actual date of the proclamation, upon full consideration of the facts and authorities, appears to be sound; so that to receive exemption under that article it was necessary for a Spanish merchant vessel to be in a port of the United States on April 21. To arrive there, whatever the cause of arrival, upon April 26 would not satisfy the requirements of the proclamation as rightly construed. However, apart from this, how can it be successfully claimed that a vessel coming to the United States in the grasp of the law, as one for antecedent reasons subject to capture, and arriving and being in a port of the United States for adjudication in prize only, may at once receive a protection extended to quite different vessels and denied to her by reason of facts of which the capture was the expression? Whatever her rights may have been irrespective of capture, surely the capture—the badge and beginning of the penalty of condemnation—could not enlarge or change them.

The argument is also made that if the proclamation is to be regarded as ambiguous, a liberal construction of it should be adopted, and that the construction should be with due regard toward our traditional policy of exemption of private property at sea from capture during war.

We have contended *ante* that there is no real ambiguity in this proclamation; that both upon its language and clear purpose, and allowing fullest scope to its preamble that the war should be conducted upon principles in harmony with the modern views and practice of nations, its meaning is plain; that while the preamble contemplated especially the demands of modern practice in relation to the four clauses of the Declaration of Paris, no authority for such change in modern practice on the questions here involved can be found which will vary the rule that such an ordinance of certain exemptions to belligerents should be strictly construed as to dates, language, and terms. Furthermore, we respectfully submit that, construing the law as it is rather than as it may be at some time in the future, courts are not permitted so to regard our traditional policy toward the question of exemption of private property at sea (which has not yet been adopted into the law of nations) as to deny rights based upon the law as it exists. Finally, that policy has been our diplomatic attitude and not our doctrine in the courts.

Dr. Lushington in the case of *The Phœnix*, Spink's Prize Cases, 1, 5, 6, stated his opinion that a relaxation of belligerent rights emanating from the government of a country, and declared in authentic documents, should receive a liberal construction. "If the words of the document are capable of two constructions, then I am clearly of the opinion that the one most favorable to the belligerent party, in whose favor the document is issued, ought to be adopted." But he says that there must be words in the document sufficient to justify the more liberal interpretation, and that he is not at liberty to travel

out of the document; and he adds: "The court must bear in mind that its province is not *jus dare*, but *jus dicere;* and I must again refer to the principle which I have often enunciated in this court, *verbis plane expressis omnino standum est.*" He therefore construed the document before him strictly and correctly. (See also *The Argo*, id., 52.)

In the *Argo* case, the vessel was restored consistently with the doctrine of strict construction of the proclamation as thus defined, because it was clearly shown that the enemy vessel had sailed from the foreign port for a port or place in the Queen's dominions prior to the date of the Order in Council, having left Havana in ballast bound for Cork, although she had taken on cargo at the intermediate foreign port of Matanzas subsequently to the date of the order, which was not forbidden, because that document did not contemplate that the Russian vessels exempted should have been *laden* at the date of the order.

The court is respectfully referred to other briefs for the Government and captors in these prize cases for further discussion on this subject, especially the briefs in the *Panama*, *Pedro*, and *Guido* cases, and to the brief filed on behalf of certain captors in the three cases just named and the present one.

AS TO THE QUESTION OF CONTINUITY OF VOYAGE.

The law as to continuity of voyage may now be briefly considered. We contend that this foreign and enemy vessel was engaged in a voyage foreign to us at all points,

and either continuous from Liverpool and back to Rotterdam, or continuous to the last Cuban port of discharge, Cienfuegos, and thence (as the origin of the return voyage) continuous to Rotterdam, with certain domestic transactions which were mere incidents, namely, the call at Pascagoula for lumber and the permission to stop at Norfolk for coal if it should be found necessary. Under the charter the vessel had liberty to call for coal. We have suggested heretofore that this call may not have been necessary. There is nothing in the record to show that it was, except the permit itself. They may have taken that merely as a precaution, natural enough under all the circumstances. The imminent state of war was known to them in Cuba.

The decisions of the court respecting continuous voyages cited by the appellant (brief, p. 19) relate mainly to breach of blockade. In *The Circassian* (2 Wall., 135, 154) the real destination was held to be New Orleans and the alleged destination to Havana to be merely colorable. In *The Bermuda* (3 Wall., 514) the ulterior and not the direct destination was held to be the significant one, and the stress of the doctrine was extended to cover any means of getting the cargo to the real final destination, even if by several transshipments; if the cargo was contraband, the condemnation of the vessel is required whether her voyage is to ports blockaded or to those not blockaded; and, finally, in effect, a seizure wherever made was held to be properly included. The *Peterhoff* case (5 Wall., 28) practically reaffirmed these views, but distinguished between different classes of contraband,

and held that ordinarily the conveyance of contraband does not subject the vessel to forfeiture; that a blockade is not to be extended by construction, and that the mouth of the Rio Grande was not included in the blockade of the ports of the rebel States. The decision of *The Springbok* (5 Wall., 1) held that an intention to transship cargo at a neutral port did not save it; that as to cargo, both in law and intent, the voyage from London to the blockaded port was one voyage, and that the liability attached from the time of sailing if captured during any part of that voyage.

It is thus seen that these rulings against neutrals in blockade decisions do not throw any clear light on the present question. No port of the United States was the "ulterior port;" the ulterior port of this enemy vessel (not engaged in running a blockade) was, as to the outward portion of the voyage, Cienfuegos; or else, either originally or as the ulterior destination of the return voyage, Rotterdam. In short, we contend and respectfully submit that any test or analogy which may be drawn from the foregoing cases as to ulterior destination fixes the same as Rotterdam, makes the voyage a foreign one *in toto*, and requires the court to conclude that she is not entitled to the protection of article 5 of the proclamation.

The appellant's brief goes on to argue that even if the fourth section of the proclamation is limited to vessels which were in ports or places of the United States on April 21, the *Buena Ventura* was in such a place within the meaning of the proclamation, and then they seek to show (but we claim without success) that, being 8 or 9 miles from

Sand Key light, which is a few miles to the westward of Key West [Sand Key light is a little west of south of Key West and about 10 miles away], and that as she was steering close to the reefs, and may have been to the eastward or westward of the light, as well as 8 or 9 miles to the southward of it, it is therefore obvious that she had been within the range of our light-houses, and was within the immediate neighborhood of Tortugas on the night of the 21st, if, indeed, she did not pass in sight of Tortugas, and hence was clearly within our territorial waters and within a place of the United States on April 21. The appellant says, no doubt inadvertently, in conceding that the *Buena Ventura* was 8 or 9 miles away from Sand Key light, whether east, west, or south, that she may have been within a mile of it. This, of course, was not possible. Nor do we understand what the appellant means by saying that she was "within the range" of our light-houses. The table of visibility of lights given on the navy chart, referred to *supra*, gives that of Sand Key light as 16¼ nautical miles. Any vessel within that distance was "within the range." The argument, on the chart which is filed with the appellant's brief and refers to the log on file in the court as an original exhibit, assumes to fix the location of the vessel on April 21 about 100 miles in a northwesterly direction from the light of Tortugas. The brief then proceeds (p. 38):

> If the last course which is noted in the log, south 42° 30′ east, was continued, the steamer went straight to Tortugas light, and if she maintained, as

presumably she did, the average speed previously made, that is, about 8.5 knots per hour, she would have been at Tortugas about 11 p. m. of April 21.

We submit to the court that this is entirely hypothetical, and merely constructs a theory favorable to the claimants upon facts which are only assumed and which apparently the log entries, as to the last facts at least, do not bear out. We suppose the showing is really made to fortify a late application here for further proof, on the ground that if the decision of the case should make necessary the exact determination of this point—that is, the point with reference to the Tortugas on the night of April 21—further proof should be allowed. We submit that a determination of this point is not necessary. The *Buena Ventura* was no more in a "place" of the United States than she was in a "port" of the United States on April 21, but was undoubtedly well offshore at all times, steering along the reefs on her normal course to Rotterdam, and was at no time within our territorial waters; and even if she had been within our territorial waters, that would not have put her within a "port or place" of the United States within the language or intent of the proclamation. A port of the United States means a port of entry or delivery. A place of the United States means some other definite point, not technically a port, where a vessel might be at anchor, or, for instance, under a permit to load. To contend that the changing location of a vessel as she was sailing along in the marine belt would fix her in a "place of the United States" would be to set up the impossible claim that the whole stretch of territorial waters along our coast is a place of

the United States, not only as to a vessel at anchor, as in a roadstead, but also as to a vessel moving along on her ordinary voyage. The phrase "ports or places of the United States" has always been used in legislation and in decisions in reference to a fixed and definite point, and can not under proper rules of interpretation be regarded as used in the proclamation in any different or larger sense. English and American customs and criminal legislation use the phrase in the same sense, as meaning ports with defined limits and such "places" as bays, rivers, and creeks where a vessel is at rest. Other legislation, particularly relating to the land, contemplates fixed spots like dockyards and arsenals. (For decisions see, *inter alia*, *United States* v. *Bevans*, 3 Wheat., 336; *United States* v. *Brailsford*, 5 Wh., 184; *United States* v. *Rodgers*, 150 U. S., 249, and cas. cit.) It may not be improper to suggest here to the court that official records appear to show that the capture took place south-southwest from Sand Key Light.

AS TO FURTHER PROOF.

This is a matter for the sound discretion of the prize court, and may of course be ordered of its own motion or accord upon a doubt arising from any source or quarter. It is not necessary to cite authorities upon the subject. The appellate court may similarly order it if they are disposed to do so. No motion or suggestion for the taking of further proof appears to have been made below, and no such suggestion or motion could properly have been granted. The request here comes rather late, and we earnestly and respectfully contend that all the circum-

stances would make the allowance of further proof in this court improper.

We do not think that the court will regard the claim for damages as entitled to much consideration. It is perhaps made in this case, as in all such cases, as an emphatic evidence that the claimant thinks he has suffered a gross marine trespass. The capture was, of course, not premature; the state of war at the time, and even previous to the time, was well established; the blockading vessels were going to their stations when the *Buena Ventura* was seized; the day before—that is, April 21—the ministers of Spain and the United States had, respectively, retired from their posts; the subsequent act of Congress fixed the 21st as the formal date of the war, and there can be no fair question of the right of the captors to make this prize. We claim, of course, not only as a right which fully shields them from a claim for damages, but as a right which requires the condemnation of the vessel. It is not necessary, therefore, to consider whether the shot by which the *Buena Ventura* was brought to made her hostile. She was hostile without that and before that. The shot was, of course, properly fired as part of the rules of the sea regarding capture.

We respectfully submit to the court that the decree below should be affirmed.

HENRY M. HOYT,
Assistant Attorney-General,
For the United States.
JOSEPH K. MCCAMMON,
JAMES H. HAYDEN,
For the Naval Captors.

APPENDIX.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Whereas by an act of Congress approved April 25, 1898, it is declared that war exists and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris;

Now, Therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be

permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: *Provided*, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish Government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the independence of the United States the one hundred and twenty-second.

[SEAL.]

WILLIAM McKINLEY.

By the President.

ALVEY A. ADEE,
Acting Secretary of State.

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